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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/719,352

11/21/2003

John R. Wall

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08/14/2006

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EXAMINER

MILLS, DANIEL J

ART UNIT

PAPER NUMBER

3679

DATE MAILED: 08/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.		Applicant(s)	
	10/719,352		WALL	
	Examiner		Art Unit	
	Daniel J. Mills		3679	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 7/13/2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

Objections to the drawings are withdrawn in view of applicant's amendment dated 7/13/2006.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Safe-Fence as shown on the April 8, 2001 archive of www.safefence.com accessible using the internet archive website "wayback machine" at:

<http://web.archive.org/web/20010311153850/www.safefence.com>. Please note also, the marked up attachment included on pages 9-11 of the instant Office action in view of Johnson (US 5,661,878).

As to claim 1, Safe-Fence discloses a fence comprising a rail consisting of at least two metal wires ensheathed in a plastic web (the webbing used for the fence is disclosed as having stainless steel wires interwoven), a slotted connector (1) having a face plate (encompasses the entirety of 1) with two slots (A and B) and a middle portion (3) separating the two slots, the connector having a front side (facing away from reader) and a rear side (facing toward reader) and also having a post attachment end (2), a free

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end of the rail (4) being disposed in the slotted connector so that the rail runs from the front side of the connector through a first slot (A) nearest the post attachment end, round the middle portion (3), and then back through the second slot (B), and a post (5) to which the slotted connector is attached using a fastener (5).

Safe-fence fails to disclose that the slotted connector has a face plate with two slots formed within the face in a planar surface thereof, the connector including a substantially planar middle portion separating the two slots.

Johnson teaches a planar strap buckle which has a face plate with two slots formed within the face in a planar surface thereof, the connector including a substantially planar middle portion separating the two slots for the purpose of providing a buckle which can be manufactured more simply, more economically, and with good reliability (column 1 lines 18-20) and to provide a buckle which is of unitary structure, simple, reliable in operation, easy to operate and inexpensive to manufacture (column 1 lines 26-28). Accordingly, It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the arrangement of Safe-fence to include a planar connector as taught by Johnson for the purpose of providing a buckle which can be manufactured more simply, more economically, and with good reliability and to provide a buckle which is of unitary structure, simple, reliable in operation, easy to operate and inexpensive to manufacture.

As to claim 2, Safe-Fence in view of Johnson results in a fence wherein the end connector comprises return edges extending along opposing sides of the rigid member, the return edges extending perpendicularly from the faceplate (the hooks 6 shown on

either side of component 2 on the R-50 corner tensioner, curve perpendicularly away from the plane of the faceplate).

As to claim 3, Safe-Fence in view of Johnson results in a fence wherein the end connector is attached to the post using a fastener (see figure 1) which permits the connector to pivot about the fastener.

As to claim 4, Safe-Fence in view of Johnson results in a fence wherein the faceplate further comprises a through hole (see 2) adapted to receive the fastener.

As to claim 5, Safe-Fence in view of Johnson results in a fence wherein the fastener is a lag bolt.

As to claim 6, Safe-Fence in view of Johnson results in a fence wherein the faceplate (encompasses the entirety of 1 includes a bend between the first slot and the post attachment end (2) (this is shown in figure 1 in the photo of the R-50 corner tensioner).

As to claim 7, Safe-Fence in view of Johnson results in a fence wherein the connector is made of steel.

As to claim 8, Safe-Fence in view of Johnson results in a fence wherein the rail is rigid yet manually deformable (this is the case when the rail is assembled with the connector and is pulled taut).

As to claim 9, Safe-Fence in view of Johnson results in a fence wherein the post is a wooden post with a circular cross section (see the archive website at http://web.archive.org/web/20010311150951/www.safefence.com/Install_End_Posts.htm).

As to claim 10, Safe-Fence in view of Johnson results in a fence further including a slotted joining connector (7) having a face plate with a first slot (8), a second slot (9), and a third slot (10), the joining connector having a front side (into the paper) and a rear side (out of the paper).

As to claim 11, Safe-Fence in view of Johnson results in a fence further comprising a second rail (shown in figure 3) consisting of at least two metal wires ensheathed in a plastic web, with ends of the first (11) and second (12) rails being in abutting relationship to each other (see figure 3).

As to claim 12, Safe-Fence in view of Johnson results in a fence wherein the first slot (8) and the second slot (9) are adapted to receive the abutting end of the first rail (11) and the second slot (9) and the third slot (10) are adapted to receive the abutting end of the second rail (12).

Response to Arguments

Applicant's arguments filed 7/13/2006 have been fully considered but they are not persuasive.

In response to applicant's argument that Johnson '878 is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Safe-Fence discloses a buckle and strap arrangement that happens to be used

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for fencing. Straps and buckles utilized to secure contents within a box, while not in applicant's field of endeavor, act as a constraint maintaining the boundary of the box, the strap would normally be subjected to forces from shifting contents within the box that would stress the strap from the interior of the box and its constraining function on the shape of the box and as such is analogous to a strap acting as a boundary of a space, a fence. Further, it is this constraining function of the packaging strap that relates it to the function of the constraining fence strap so that the device of Johnson is reasonably pertinent to the problems of a constraining fence strap.

Applicant argues that Safe-Fence in view of Johnson '878 fails to disclose or result in a rail as disclosed by applicant. Examiner disagrees, Safe-Fence clearly discloses such a rail. Safe-Fence clearly discloses that metal wire conductors are woven (and therefore ensheathed) in the plastic web of the "polytape" (in fact this type of product is even typically referred to as "webbing"). Applicant claims "at least two metal wires", Safe-Fence discloses more than two wires, which meets applicant's claim limitation.

In response to applicant's argument that the buckle taught by Johnson is unsuitable for use in a fencing system, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). Examiner also disagrees that certain

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plastic materials are unsuitable for fencing. There are more than a few plastics which are stronger than steel in tension.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Johnson gives clear and compelling motivation for using his buckle for a strapping system. Since Safe-Fence discloses nothing more than a strapping system to be used as a fence, Johnson's teachings are directly relevant.

Applicant argues that it would require substantial reconstruction and redesign of Safe-Fence to accommodate the buckle of Johnson. Examiner respectfully disagrees,

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as both references discuss the same technology (straps and buckles), it takes neither an inventive leap, nor even any imagination to see that both are compatible and that the buckle as taught by Johnson is a preferable addition to Safe-Fence.

Applicant argues that his disclosed method of assembly is different than that of Safe-Fence and constitutes a patentable distinction. Examiner disagrees, applicant may pursue a divisional application in which a method is claimed, but the application at hand is concerned only with the fence system in a static orientation. Clearly, Safe-fence discloses applicant's claimed subject matter. Examiner would point out that Johnson clearly teaches a method for using his buckle with strapping which is identical to that disclosed by applicant (see figure 7). Examiner also points out that this type of argument is along the lines of "bodily incorporation" which was treated above.

Conclusion

All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a). A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel J. Mills whose telephone number is 571-272-8115. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on 571-272-7087. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DJM
DJM
7/26/2006


James R. Brittain
Primary Examiner

Tensioners - Safe-Fence Hardware - Microsoft Internet Explorer provided by USPTO

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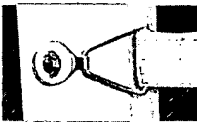
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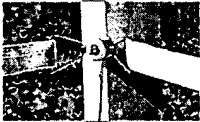
R-40 End Tensioner

Begin and end each strand with an R-40 at gate posts or buildings. Holds webbing tight and allows easy re-tightening.



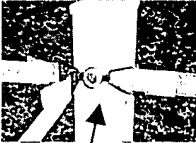
R-50 Corner Tensioner

Use the R-50 at all corners or any up and down hill direction change greater than 10 degrees. Also used at tape gates.



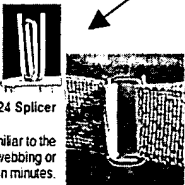
R-55 Tee Tensioner

The R-55 has three tensioners. Use for cross fence junctions.



R-24 Splicer

A stainless steel spring buckle similar to the tensioner. Used to join rolls of webbing or repair torn webbing in minutes.



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
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Figure 1

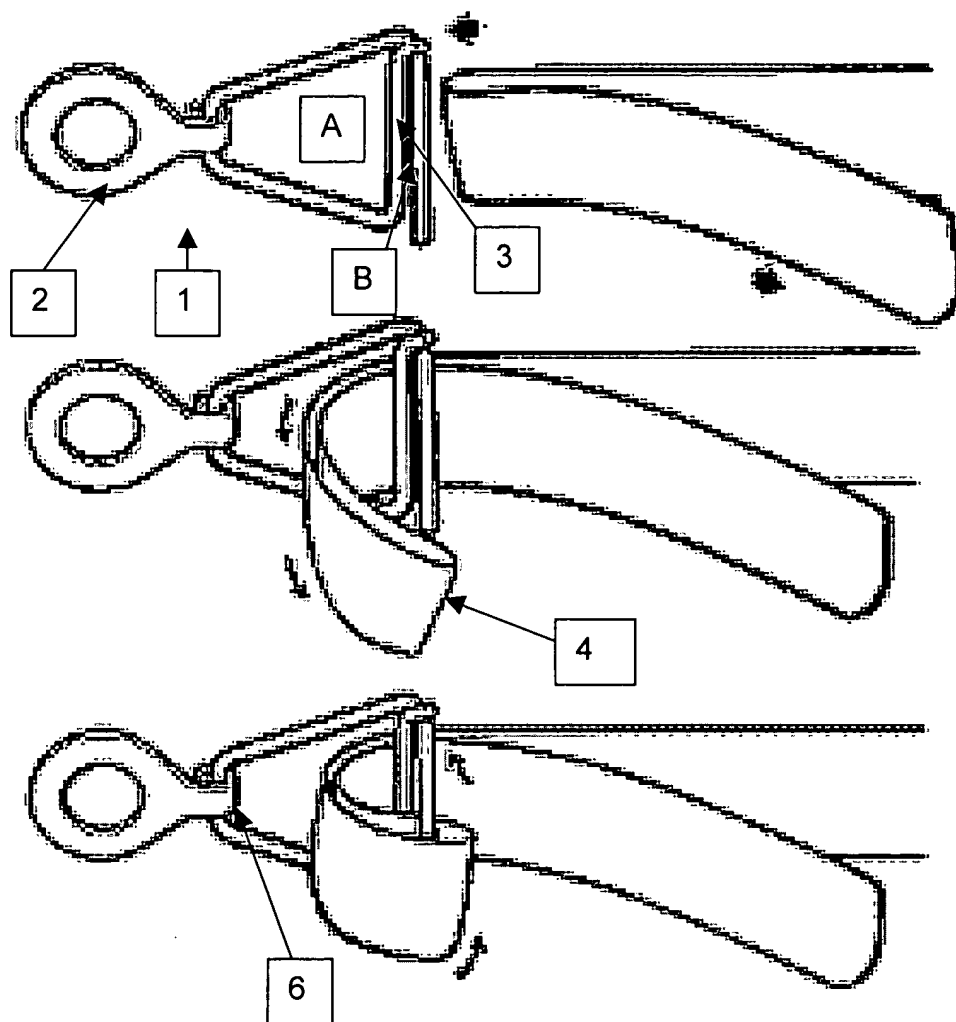


Figure 2

